



# City of Austin

City Manager's Office  
P.O. Box 1088, Austin, TX 78767  
(512) 974 2200, Fax (512) 974-2833

Spencer Cronk, City Manager

October 8, 2018

Jon Niermann  
Chairman  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Dear Chairman Niermann:

The City of Austin appreciates the opportunity to comment on the Texas Commission on Environmental Quality's (TCEQ) draft Volkswagen (VW) beneficiary mitigation plan for Texas. While we understand the need to prioritize the use of these funds to the benefit of the people across this great state, we believe that it is impossible for the state to achieve the goals of the mitigation trust without including her fourth largest metropolitan area, Austin-Round Rock, accounting for 12.49% of the vehicles affected by VW's malfeasance in Texas.

We urge you to keep in mind that the primary purpose of the mitigation funding is to mitigate harm to public health that has already been done due to VW's actions. For that purpose, the trust requires that plans:

- "mitigate the total lifetime excess NO<sub>x</sub> emissions from the affected VW vehicles where they "were, are, or will be operated"; and
- account for the impact on air quality, "in areas that bear a disproportionate share of the air pollution burden within its jurisdiction".

TCEQ's proposal prioritizes "areas of the state with the potential to be most impacted by NO<sub>x</sub> emissions and in particular areas of the state designated non-attainment of National Ambient Air Quality Standards (NAAQS) for ground-level ozone and other areas monitoring ground-level ozone levels near the NAAQS for ozone". It would be inconsistent with the intent of the Environmental Mitigation Trust Agreement for Central Texas not to get a proportionate share of funds. The Austin-Round Rock Metropolitan Statistical Area (MSA) is near non-attainment for ground-level ozone under the NAAQS. Credit for maintaining compliance with the ozone NAAQS in Central Texas can largely be attributed to substantial improvements in vehicle emissions standards over the years. The TCEQ allocation plan does not account for the disproportionate impact of the affected vehicles on ambient air pollution levels within the Austin-Round Rock region. Of the 40,444 affected vehicles in Texas, 5,052 (12.49%) were located within the Austin-Round Rock MSA. The Austin-Round Rock MSA has the highest number of affected vehicles per capita (2.39 vehicles per 1,000 residents) of any metropolitan area in the state. Even if you


combine the 28 counties that TCEQ has proposed as priority areas for this funding (1.38 vehicles per 1,000 residents), the Austin-Round Rock MSA ratio is substantially higher.

TCEQ contradicts the primary purpose of the mitigation funding when it determined that allocating the funding to areas based on the number of affected VW vehicles that were registered in each county would not best correspond to the need to address air quality issues in the state. The VW mitigation trust's allocation of the settlement funding to Texas was directly proportionate to Texas's share of affected VW vehicles. The fact that the initial statewide allocation was determined in this way demonstrates that this approach truly does best correspond to the purpose of the trust – which is to mitigate NO<sub>x</sub> emissions in communities impacted by VW, not to address general air quality issues across the state. TCEQ supports its departure from this approach by stating that “past vehicle registration data does not necessarily reflect the current status and location of the vehicles or where the vehicles may operate, particularly when considering the buy-back program being implemented by VW”. However, in doing so, TCEQ acknowledges that utilizing past vehicle registration data clearly reflects where those vehicles “were” operated; an element required from the purpose of the trust. It would seem that utilizing an approach that clearly reflects where those vehicles “were” best corresponds to the purpose of the trust rather than an approach that does not seem to consider these numbers at all.

In considering how to proceed with the plan to allocate the mitigation trust, we urge you to include Texas' fourth largest metropolitan area that accounts for 12.49% of the vehicles affected by VW's malfeasance in Texas. Only by including the Austin-Round Rock area will the state be able to achieve the goals of the mitigation trust.

Thank you for your consideration.

Sincerely,



Spencer Cronk  
City Manager